

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES EDWARD NORRIS and JAMES  
FRANKLIN GIBSON,

Plaintiffs,

v.

RAY LAHOOD,

Defendant.

CASE NO. C13-5928 BHS

ORDER DENYING PLAINTIFF'S  
MOTION TO AMEND AND  
DISMISSING PLAINTIFF  
GIBSON

This matter comes before the Court on Plaintiff James Franklin Gibson's ("Gibson") motion to more clearly explain and clarify the timeliness and venue aspects of Plaintiffs' complaint (Dkt. 10). Based on a thorough reading of this motion, Gibson is not asking the Court for a ruling. However, he does appear to seek amendment of the complaint so that he may clarify the timeliness and venue aspects as they relate to him. Therefore, the Court deems Gibson's motion as a motion to amend the complaint. The Court has considered the pleadings filed with respect to this motion and the remainder of the file and hereby denies the motion and *sua sponte* dismisses Gibson and his claims for the reasons stated herein.

1 Gibson's civil rights issues in this case have already been adjudicated by Judge  
2 Ronald B. Leighton. *See Gibson v. LaHood*, C13-5870 (RBL), Dkt. 1-1 (Proposed  
3 Complaint), and Dkt. 7 (Amended Complaint joining Gibson as a co-plaintiff in this  
4 case). On October 22, 2013, Judge Leighton denied Gibson's motion to proceed IFP in  
5 his suit against Defendant Roy LaHood ("LaHood"), finding that his proposed complaint  
6 was time barred, in the wrong venue, and lacked merit. *See Gibson v. LaHood*, C13-5870  
7 (RBL), Dkt. 6 at 2 (*citing Triati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th  
8 Cir. 1987) (a court should "deny leave to proceed *in forma pauperis* at the outset if it  
9 appears from the face of the complaint that the action is frivolous and without merit"),  
10 and *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984) (a complaint is frivolous if  
11 it has no arguable basis in law or fact). On November 11, 2013, Judge Leighton denied  
12 Gibson's motion for reconsideration of his application to proceed *in forma pauperis* and  
13 his motion to consolidate his case with the instant case, again finding Gibson's claims  
14 stale, time barred and legally frivolous. *Gibson v. Lahood*, C13-5870(RBL), Dkt. 9.

15 Judge Leighton's orders control and constitute final orders. Therefore, Gibson is  
16 dismissed as a plaintiff from this action and his motion to amend the complaint is  
17 rendered moot, as his clarifications regarding timeliness and venue would not permit this  
18 Court to decide issues that have already been adjudicated by Judge Leighton. If Gibson  
19 wishes to appeal Judge Leighton's decision, he may attempt to do so. However, it  
20 appears that the time for filing an appeal to the Ninth Circuit has run.  
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1 Therefore, it is hereby **ORDERED** that Gibson's motion to amend (Dkt. 10) is  
2 **DENIED** and Gibson and his claims against LaHood are **DISMISSED**.

3 Dated this 14<sup>th</sup> day of February, 2014.

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6 BENJAMIN H. SETTLE  
7 United States District Judge  
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